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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,219	11/04/2003	Jerry E. Elliott	10 CIP(2)	5156
43031	7590	09/08/2005	EXAMINER DUNWOODY, AARON M	
THOMAS E. HILL EMRICH & DITHMAR, LLC 125 SOUTH WACKER DRIVE, SUITE 2080 CHICAGO, IL 60606-4401			ART UNIT 3679	PAPER NUMBER

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/701,219	ELLIOTT, JERRY E.	
	Examiner	Art Unit	
	Aaron M. Dunwoody	3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

[Handwritten signature]

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group II, species Figures 10-12 in the reply filed on 7/8/2005 is acknowledged. The traversal is on the ground(s) that no pending claim in the application are directed to the non-adjustable pipe repair clamp installation tool illustrated in Figures 1-9. This is found persuasive.

The requirement is still deemed proper and is therefore made FINAL.

Priority

Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

Information Disclosure Statement

No Information Disclosure Statement submitted.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the handle comprised of rubber or an elastic material must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure

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is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-26 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-40 of copending Application No. 10/608290. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-26 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 1885128, Montgomery.

In regards to claim 1, in Figures 3-6, Montgomery discloses an apparatus for installing a repair clamp on a pipe, the repair clamp including a generally cylindrical body having first and second opposed edge flanges, a slot extending the length thereof for receiving the pipe and positioning the repair clamp about an outer circumference of the pipe, and plural nut and bolt combinations coupled to the edge flanges for drawing the repair clamp tightly about the pipe, the apparatus comprising: a body portion having first and second opposed ends; an arm having a first end pivotally coupled to the body portion intermediate the first and second opposed ends thereof, the arm further including a second opposed end adapted for insertion in an aperture in the first edge flange of the repair clamp; a clasp pivotally coupled to the body portion adjacent the first end thereof and adapted to engage an outer edge of the repair clamp's second edge flange when the body portion is in a first position relative to the arm and clasp and the repair clamp is loosely disposed about the pipe, wherein pivoting displacement of the body portion about the arm and clasp to a second position draws the repair clamp's edge flanges together for securely maintaining the repair clamp on and in engagement

with the pipe and allowing the nut and bolt combinations to be tightened for securing the repair clamp to the pipe in a sealed manner; and an adjustable mechanism for adjusting spacing between the arm and the clasp to accommodate a range of sizes of the repair clamp and diameters of the pipe.

Note, **the repair clamp is not part of the claimed invention.**

In regards to claim 2, in Figures 3-6, Montgomery discloses the clasp includes a first end engaging the outer edge of the repair clamp's second edge flange and a second opposed end pivotally coupled to the body portion.

In regards to claim 3, in Figures 3-6, Montgomery discloses the first end of the clasp includes a recessed slot adapted to receive the outer edge of the repair clamp's second edge flange.

In regards to claim 4, in Figures 3-6, Montgomery discloses a first pivot pin coupling the second end of the clasp to the body portion.

In regards to claim 5, in Figures 3-6, Montgomery discloses a second pivot pin coupling the first end of the arm to the body portion.

In regards to claim 6, in Figures 3-6, Montgomery discloses the adjustable mechanism includes at least one elongated slot disposed in the body portion and adapted to receive the second pin and having plural engaging ribs disposed in a spaced manner along the length of the slot for engaging the second pivot pin for permitting spacing between the recessed slot of the clasp and the second end of the arm to be adjusted to accommodate a range of sizes of the repair clamp and diameters of the pipe.

In regards to claim 7, in Figures 3-6, Montgomery discloses the body portion includes a pair of elongated slots each having plural engaging members disposed in a spaced manner along the length of each of the slots for engaging the second pivot pin for permitting spacing between the recessed slot of the clasp and the second end of the arm to be adjusted.

In regards to claim 8, in Figures 3-6, Montgomery discloses the body further includes first and second parallel, spaced, linear members each including a respective elongated slot having plural engaging members, and wherein the first pivot pin is disposed in the slots in the first and second members.

In regards to claim 9, in Figures 3-6, Montgomery discloses each of the engaging members includes a curved portion for engaging and maintaining the second pivot pin in fixed position in the slots in a releasable manner.

In regards to claim 10, in Figures 3-6, Montgomery discloses each of the elongated slots includes plural curved ribs arranged in spaced, linear alignment within the slot.

In regards to claim 11, in Figures 3-6, Montgomery discloses the clasp includes a hook disposed on the second end thereof and positioned about the first pivot pin.

In regards to claim 12, in Figures 3-6, Montgomery discloses the first and second spaced members of the body portion form a handle at respective first connected ends thereof.

In regards to claim 13, in Figures 3-6, Montgomery discloses second opposed ends of the first and second members are arranged in a spaced manner from each

other and wherein the arm and the clasp are disposed between the first and second members adjacent the second ends thereof.

In regards to claim 14, in Figures 3-6, Montgomery discloses the first and second pivot pins are disposed between and coupled to the first and second members.

In regards to claim 15, in Figures 3-6, Montgomery discloses the adjustable mechanism further includes first and second elongated linear slots respectively disposed in the first and second members with each of the slots having plural engaging members disposed in a spaced manner along the respective lengths thereof, and wherein the engaging members in the first slot engage a first end of the second pivot pin and the engaging members in the second slot engage a second opposed end of the second pivot pin.

In regards to claim 16, in Figures 3-6, Montgomery discloses the arm and the clasp are disposed in closely spaced, aligned relation when the body portion is pivotally displaced to the second position.

In regards to claim 17, in Figures 3-6, Montgomery discloses a handle disposed on the second end of the body portion.

In regards to claim 18, in Figures 3-6, Montgomery discloses the handle is comprised of rubber or an elastomeric material.

In regards to claim 19, in Figures 3-6, Montgomery discloses the second end of the arm includes a hook structure for insertion into the aperture when the body portion is in the first position, and wherein the hook structure cannot be removed from the

aperture when the body portion is in the second position for locking the repair clamp in position on the pipe.

In regards to claim 20, in Figures 3-6, Montgomery discloses the aperture is in the form of a generally linear slot and the hook structure includes first and second coupled flat portions having approximately 90 degrees relative orientation.

In regards to claim 21, in Figures 3-6, Montgomery discloses the clasp is generally C-shaped and includes an elongated slot for engaging an outer edge of the repair clamp's second edge flange.

In regards to claim 22, in Figures 3-6, Montgomery discloses the apparatus is comprised of high strength steel.

In regards to claim 23, in Figures 3-6, Montgomery discloses first and second pins attached to the body portion for pivotally coupling the arm and clasp, respectively, to the body portion, and wherein the second pin forms an axis of rotation about which the body portion rotates when moved between the first and second positions. 24.

In regards to claim 24, in Figures 3-6, Montgomery discloses the first and second pins and an end portion of the clasp engaging an outer edge of the repair clamp's second edge flange are in general linear alignment when the body portion is in the second position.

In regards to claim 25, in Figures 3-6, Montgomery discloses the body portion is pivotally displaced about the second pin in moving the body portion from the first to the second position in removing the apparatus from the repair clamp.

In regards to claim 26, in Figures 3-6, Montgomery discloses an apparatus for installing a repair clamp on a pipe, the repair clamp including a generally cylindrical body having first and second opposed edge flanges, a slot extending the length thereof for receiving the pipe and positioning the repair clamp about an outer circumference of the pipe, and plural nut and bolt combinations coupled to the edge flanges for drawing the repair clamp tightly about the pipe, the apparatus comprising: a body portion having first and second opposed ends; an arm having a first end pivotally coupled to the body portion intermediate the first and second opposed ends thereof, the arm further including a second opposed end adapted for insertion in an aperture in the first edge flange of the repair clamp; a clasp pivotally coupled to the body portion adjacent the first end thereof and adapted to engage an outer edge of the repair clamp's second edge flange when the body portion is in a first position relative to the arm and clasp and the repair clamp is loosely disposed about the pipe, displacement of the body portion about the arm and clasp to a second position wherein pivoting draws the repair clamp's edge flanges together for securely maintaining the repair clamp on and in engagement with the pipe and allowing the nut and bolt combinations to be tightened for securing the repair clamp to the pipe in a sealed manner; and a moveable member connecting the arm to the body portion, wherein the position of the arm relative to the clasp may be adjusted for engaging repair clamps having a range of sizes for positioning on pipes having a range of diameters.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron M. Dunwoody whose telephone number is 571-272-7080. The examiner can normally be reached on 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Aaron M Dunwoody
Primary Examiner
Art Unit 3679

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